

Fensterwald Sues CIA To See His Personal File

By Mary Ellen Perry
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Somewhere among CIA records is "Fensterwald Security File No. 560 511," according to its subject, Washington lawyer and political activist Bernard Fensterwald Jr., who wants to know its contents.

Fensterwald has filed a suit in Federal District Court in Alexandria asking the court to order the intelligence agency to produce the file and let a federal judge examine its contents.

Fensterwald has a long record of fighting government secrecy, first as counsel to a number of Senate investigations and most recently as counsel to Watergate conspirator James E. McCord Jr. and to James Earl Ray, convicted killer of Dr. Martin Luther King Jr.

He said yesterday he is acting under an amendment in the Freedom of Information Act, a measure that was passed by Congress over President Ford's veto in December.

He said he lodged the complaint after the agency failed to produce the file within 20 working days of his request made on Feb. 21 as required by the law.

ATTACHED to the suit are copies of letters exchanged between Fensterwald and CIA officials earlier this year.

In a letter to CIA Director William E. Colby in January, Fensterwald asked to see the file. A second letter on Feb. 3 reminded Colby that the revised

Freedom of Information Act would go into effect on Feb. 20, and a third the next day informed CIA Freedom of Information Coordinator Robert S. Young that a check for \$25 was enclosed "to cover the cost of search, and reproduction" of the file.

CIA General Counsel John S. Warner replied to Fensterwald late in February that "we have not conducted any domestic surveillance on you. . . ."

"Your name does appear in documents in the possession of the agency," Warner indicated, however. "Because of the nature of some of these documents, we are not able to permit you to examine them."

"A FEW DOCUMENTS, and the information contained therein, originated in other government agencies and access to them is not controlled by us," Warner wrote. "Certain additional documents cannot be shown to you because of the need to protect the privacy of the other individuals mentioned in them."

Warner also informed Fensterwald:

"In addition to the foregoing, the Office of Legislative Counsel maintains folders containing documents which reflect contacts with you during your many years as an employee of the legislative branch of the government. My office maintains a number of folders containing documents which reflect our contacts with you in your role as executive director of the Committee to Investigate

Assassinations and as private counsel for certain of your clients"

In addition to his other activities, Fensterwald also founded the private committee to investigate the assassinations of King and John and Robert Kennedy.

WARNER TOLD Fensterwald the agency was processing his request and that its delay in responding to his letters "resulted solely from the extremely heavy workload under which this office is laboring."

When Fensterwald had not heard from the agency by March 10, the date by which Young said he would have determined whether to release the files, he said he decided to sue.

A CIA spokesman said yesterday the agency had no comment but that its legal staff was aware of the suit. The spokesman said three other suits have been lodged against the agency under the amended act.

That provision permits a review of secret documents



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by a federal judge to determine whether information in the documents can be disclosed or should be withheld if it fits certain exceptions.

A judge can allow the files to remain secret if he finds that they breach national security, invade privacy, reveal trade secrets, contain interagency memos or include investigatory records compiled for law enforcement, among others, Fensterwald said.

The existence of a file on Fensterwald was first revealed by Sen. Howard H. Baker Jr., R-Tenn., who said in January that an investigation he conducted into the CIA's activities disclosed that the attorney and former aide to the late Sen. Edward V. Long of Missouri was the subject of CIA illegal record-keeping.

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